

Supreme Court, U. S.  
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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 76-142

ROBERT W. DICKSON  
AND GEORGE A. ROGERS,  
APPELLANTS,

V.

THE STATE OF NEW HAMPSHIRE,  
APPELLEE.

ON APPEAL FROM THE SUPREME COURT  
OF THE STATE OF NEW HAMPSHIRE

MOTION TO DISMISS OR AFFIRM

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ROBERT W. DICKSON  
AND GEORGE A. ROGERS,  
Appellants,

v.

THE STATE OF NEW HAMPSHIRE,  
Appellee.

\_\_\_\_\_  
ON APPEAL FROM THE SUPREME COURT  
OF THE STATE OF NEW HAMPSHIRE

\_\_\_\_\_  
MOTION TO DISMISS FOR AFFIRM  
\_\_\_\_\_

The Appellee moves this Court to dismiss the appeal herein or, in the alternative, to affirm the decision of the Supreme Court of the State of New Hampshire on the grounds that such federal questions as are involved have been decided adversely to the Appellants by this

Court and that such federal questions as are involved are so unsubstantial as not to warrant further review.

OPINION BELOW

The decision of the Supreme Court of New Hampshire is reported at 115 N.H. \_\_\_\_\_ (decided November 28, 1975), 355 A.2d 822 (1975), and is reproduced as Appendix A in the Appellants' Jurisdictional Statement. (At pp. 15-17).

FEDERAL QUESTIONS PRESENTED

The federal questions raised by the Appellants in their Jurisdictional Statement are "whether the two-tier trial system of the state of New Hampshire complies with the due process and right to jury trial requirements of the United States Constitution." (At p. 7).

### THE FACTS OF THE CASES

For the purpose of this Motion to Dismiss or Affirm, the Appellee accepts as substantially correct the statement of the facts contained in the Appellants' Jurisdictional Statement at pages 5-7.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional and statutory provisions involved are set forth in the Appellants' Jurisdictional Statement at pages 4-5.

### ARGUMENT

THE FEDERAL QUESTIONS INVOLVED HAVE BEEN DECIDED ADVERSELY TO THE APPELLANTS BY THIS COURT AND ARE SO UNSUBSTANTIAL AS NOT TO WARRANT FURTHER REVIEW.

In State vs. Handfield, 115 N.H. \_\_\_\_ (decided November 28, 1975), 355 A.2d 822 (1975), the issue before the Supreme Court of New Hampshire was precisely the issue presented to this Court by the Appellants herein, the defendant having had his motor vehicle operator's license revoked subsequent to a finding of guilty by a district court judge without a jury on a misdemeanor complaint of driving while intoxicated. In its opinion, the Supreme Court of New Hampshire found no support in Costarelli vs. Massachusetts, 421 U.S. 193 (1975), for the position taken by the Appellants herein and correctly anticipated that this Court would not follow Callan vs. Wilson, 127 U.S. 540 (1888), in the case of Ludwig vs. Massachusetts, 44 U.S.L.W. 5173, 19 Cr. L.



3217 (decided June 30, 1976). (Handfield, supra, at 354). On June 30, 1976, the same date as this Court's decision in Ludwig, supra, this Court denied defendant Handfield's petition for certiorari. 44 U.S.L.W. 3755. In Ludwig, this Court found "without substance" the argument that a "two-tier court system unconstitutionally burdens a defendant in the exercise of his right to a trial by jury." (Ibid, p. 3220 and p. 3221). This Court, accordingly, approved the two-tier court system of Massachusetts as it previously had approved the two-tier court system of Kentucky. Colten vs. Kentucky, 407 U.S. 104, 32 L. Ed. 2d 584 (1972). The two-tier court system of New Hampshire being not unlike those in Massachusetts and Kentucky, the decisions in Ludwig and Colten are dispositive of the issues raised by the Appellants herein.

The fact that upon conviction in a district court of the misdemeanor offense of driving while intoxicated, the Appellants were subjected to mandatory revocation for limited periods of their motor vehicle operator licenses (New Hampshire RSA 262-A:64-a (supp)) does not provide a basis for an analysis different than those in Ludwig and Colten. The revocation of a motor vehicle operator's license by due process is within the police power of the State and is not a criminal sanction. Bell vs. Burson, 402 U.S. 535, 29 L. Ed. 2d 90 (1971); State vs. Bowles, 113 N.H. 571 (1973).

The federal questions involved are not sufficiently substantial so as to warrant further review. While the Sixth Amendment right to trial by jury is applicable to the states through the Fourteenth Amendment (Duncan vs. Louisiana, 391 U.S. 145, 20 L. Ed. 2d 491 (1969)), the due process

requirements of the Fourteenth Amendment never have been held by this Court to apply in their totality to the states and, in particular, to prohibit the two-tier court system utilized in at least twenty-four states. In Ludwig, supra, this Court stated:

"The modes of exercising federal constitutional rights have traditionally been left, within limits, to state specification. In this case, Massachusetts absolutely guarantees trial by jury to persons accused of serious crimes, and the manner it has specified for exercising this right is fair and not unduly burdensome." (Ibid, p. 3221).

The State of New Hampshire contends that the alleged "burden" of the Appellants in being required to answer first to criminal charges in a district court without a jury, subject to an absolute right of appeal and trial de novo by jury, is a burden sufficiently unsubstantial so as not to invoke Sixth Amendment consideration and so as not to warrant further review by this Court.

# CONCLUSION

For the reasons set forth above, the Appellee respectfully urges this Court to grant the Motion to Dismiss or Affirm herewith submitted.

Respectfully submitted,

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August 20, 1976